

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

JAMES EZELL, III

Plaintiff,

v.

DAMON HININGER, *et al.*,
Defendants.

Case No: 19-cv-302-JHP-SPS

**APPLICATION TO STAY PROCEEDINGS AND REQUEST FOR ORDER
REQUIRING SPECIAL REPORT AND BRIEF IN SUPPORT**

COME NOW Defendants, by and through Assistant Attorney General Desiree D. Singer, and request this Court to stay the proceedings in the above styled matter and order the Oklahoma Department of Corrections (“ODOC”) to submit a *Martinez* report, also known as a Special Report, pursuant to *Martinez v. Aaron*, 570 F.2d 317 (10th Cir. 1978). In support of this request, Defendants offer this brief.

BRIEF IN SUPPORT

In *Martinez v. Aaron*, 570 F.2d 317, 319 (10th Cir. 1978), the Tenth Circuit approved the practice of a court-authorized investigation and report conducted by corrections officials “to undertake a review of the subject matter of the Complaint” in order to provide the court with additional information for the processing of the prisoner’s claim. The *Martinez* Court deemed the investigation and report “to be not only proper but necessary” to fully consider the issues brought before the court. *Id.* The Tenth Circuit ultimately held that the district court properly dismissed the *Martinez* plaintiff’s claim as being frivolous under 28 U.S.C. §1915 after ordering and reviewing such a report. *Id.*

The *Martinez* procedure has been regularly upheld and recommended. *See, Johnson v. Parke*, 642 F.2d 377, 378 (10th Cir. 1981); *Robinson v. Benton*, 579 F.2d 70 (10th Cir. 1978); *Martinez v. Chavez*, 574 F.2d 1043 (10th Cir. 1973) (review of county jail conditions); *Wiggins v. New Mexico State Supreme Court Clerk*, 664 F.2d 812, 817 (10th Cir. 1981) (“we suggest that the procedures, order and practice expressly approved by this Court in *Martinez v. Aaron*, [citation omitted] may be applicable”).

This Court would similarly benefit from a Special Report that addresses the facts of the incidents alleged in Plaintiff Complaint and ODOC policies relevant thereto. Specifically, as a threshold matter, the Special Report would include all grievance records, thereby aiding the Court in its determination of whether Plaintiff exhausted administrative remedies prior to commencement of suit, as required by law. The Special Report would also contain all ODOC policies, administrative/facility records, and inmate-specific documentation relevant to Plaintiff's claims.

The Tenth Circuit has expressly approved the use of *Martinez* Reports for the purpose of developing a record for determining “which facts alleged in the Complaint were relevant, accurate, and subject to bona fide dispute.” *Chavez*, 574 F.2d at 1046. *See also Phillips v. Carey*, 638 F.2d 207, 208 (10th Cir. 1981), which noted that the facts of the incidents complained of by plaintiff inmates are often not before the Court in any sufficient degree, thus necessitating a *Martinez* Report. “The purpose of the *Martinez* report is to identify and clarify the issues plaintiff raises in his complaint.” *Gutierrez v. Torres*, 416 F. App'x 764, 766 n. 4 (10th Cir. 2011) (unpublished opinion) (citing *Hall v. Bellmon*, 935 F.2d 1106, 1112 (10th Cir. 1991). The

Martinez report assists in “develop[ing] a record sufficient to ascertain whether there are any factual or legal bases” for the alleged claims. *Breedlove v. Costner*, 405 F. App’x 338, 343 (10th Cir. 2010) (unpublished opinion) (citing *Hall*, 935 F.2d at 1109).

For the foregoing reasons, the Defendants urge this Court to issue an Order staying proceedings herein for at least sixty (60) days and requiring the Oklahoma Department of Corrections to submit a Special Report pursuant to the authority set forth above.

Respectfully submitted,

/s/ Desiree D. Singer

DESIREE D. SINGER, OBA #33053

Assistant Attorneys General

Oklahoma Attorney General’s Office

Litigation Division

313 NE 21st Street

Oklahoma City, Oklahoma 73105

Telephone: (405) 521-3921

Facsimile: (405) 521-4518

Email: desiree.singer@oag.ok.gov

Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of January 2020, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing a true and correct copy of the foregoing was sent via U.S. mail, postage prepaid to the following who is not an ECF registrant:

James Ezell, III # 237230
Davis Correctional Facility
6888 E. 133rd Road
Holdenville, OK 74848
Plaintiff *pro se*

/s/ Desiree D. Singer
Desiree D. Singer